

Are We Really A Society Of Laws?

■ Dr. M.N. Buch

The Chambers Twenty-first Century dictionary defines democracy as a form of government in which the people govern themselves or elect representatives to govern them. That state is defined as a democracy which, in the words of the dictionary, is “concerned with or following the principles of democracy, believing in or providing equal rights and privileges for all”. Our Constitution, in the Preamble, constitutes India into a democratic republic. The Preamble itself gives equal rights to all, just as Article 14 mandates equality before law. The issue is whether in fact there is equality before law for all Indians.

Salman Khan, a film star, caused the death of one person and grievous injury to four others thirteen years ago when he drove a powerful car at high speed under the influence of liquor. He was originally charged under section 304A IPC for a rash and negligent act resulting in death. This charge was later enhanced to one under section 304 IPC, that is, culpable homicide not amounting to murder. The Sessions Court convicted Salman Khan and awarded him five years rigorous imprisonment. However, Salman Khan did not spend even a minute in jail because the Bombay High Court bailed him out. The matter being sub judice one cannot comment on the merit or otherwise of the case, but it would be helpful if someone could review the past ten years record of cases in Maharashtra where persons convicted of having caused death in a road accident were granted bail with such alacrity. Perhaps the Judiciary itself should hold such a review. Ultimately equality before law demands that courts should not be influenced by the status of a person when deciding a matter before it.

The second case relates to Jayalalitha who was convicted by the trial court in a disproportionate assets case but was recently acquitted by the Karnataka High Court and is about to resume power as Chief Minister of Tamil Nadu. One has a certain disquiet about this judgement, which cannot be expressed as questioning its finality unless by way of appeal, but one needs to express one's apprehensions in the interest of the rule of law. The special public prosecutor has alleged that the Hon'ble High Court did not give him a fair opportunity to represent the State's case and, therefore, he was prevented from forcefully arguing the prosecution case. He is a very respected advocate who has twice been Advocate General of Karnataka and his statement cannot be brushed aside lightly. Secondly, as reported in the newspapers, the High Court has held that there are no disproportionate assets because property was acquired with the help of heavy loans taken by the accused. How heavy? Who would lend such sums of money as would permit Jayalalitha to acquire assets worth several hundred crores? How would Jayalalitha repay these loans? How many public servants have taken this plea and in how many disproportionate assets cases have the courts accepted it? Perhaps this is a fit case to be taken up in appeal before the Hon'ble Supreme Court so that the apex court may set all misgivings at rest by either upholding the judgement of the Karnataka High Court or setting it aside. Till that happens there will be lingering doubts that there is judicial discrimination between a patwari or a constable taking a bribe and a person of the status of Jayalalitha being accused of possessing disproportionate assets.

In Madhya Pradesh the Professional Courses Entrance Examination Board has come under heavy fire for corrupt practices in conducting examinations. A minister and several officials of the Board have been arrested and have been denied bail. The High Court has ordered the setting up of a Special Task Force to investigate the offences and has constituted a special investigation team headed by a retired High Court Judge to supervise the investigation. Several hundred students have been arrested and have spent long periods in jail either without bail or through delayed bail. Their examination results have been cancelled, many medical and other students have been ousted from their colleges after pursuing

their studies for some years, their careers are in ruin and as if they were not punished enough not only have they been jailed but the High Court has ordered that several hundred other students so accused must also be traced and prosecuted. They have killed no one, have caused no bodily harm and though they have corrupted the system they have been suitably punished without necessarily being prosecuted. Salman Khan gets bail and persons cheating at examination or promoting it are in jail. Is this justice?
